

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

WP(C).No. 4843 of 2007(B)

PETITIONER:

RESHAFATIMA FAIZAL (MINOR),
AGED 3 YEARS, D/O. FAIZAL, RESIDING AT "SUBAIDAS"
CHANGAMPUZHA NAGAR P.O., NEAR UNICHIRA CHURCH,
KOCHI - 33, REP. BY HER MOTHER RAHANA FAIZAL.

BY ADV. SRI.KKM.SHERIF
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SMT.RUKMA S RAJ

RESPONDENTS:

1. THE CORPORATION OF KOCHI,
ERNAKULAM, REP. BY ITS SECRETARY.
2. THE HEALTH SUPERVISOR,
(AUTHORITY FOR REGISTRATION OF BIRTHS AND DEATHS),
CORPORATION OF KOCHI, ERNAKULAM.
3. THE CHIEF REGISTRAR FOR REGISTRATION OF
BIRTHS AND DEATHS/PANCHAYATH DIRECTOR,
THIRUVANANTHAPURAM.

BY ADV. SMT.M.K.PUSHPALATHA,SC,COCHIN CORPORATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/02/2007, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

= = = = =

WP(C).No. 4843 OF 2007-B

= = = = =

Dated this the 14th day of February, 2007.

JUDGMENT

The petitioner is a minor. Her mother is Rahana Faizal and father P.M.Faizal. The birth of the petitioner on 5-4-2003 was registered on 16-4-2003 showing her name as Marwa Faizal and Ext.P1 birth certificate has been issued under Section 17 of the Registration of Births and Deaths Act, 1969.

2. It appears that the name of the child as Marwa Faizal was tendered to the registering authority on a mistake of fact by some person other than its parents and the child was called Reshafatima Faizal. This led the mother of the child making a gazette notification changing the name of the daughter as Reshafatima Faizal from Marwa Faizal for the purpose of the birth certificate. This essentially is the intention behind Ext.P2 notification. On the strength of that

notification, she moved the competent authority under the aforesaid Act for rectification of error. Following a direction by this Court in the form of Ext.P4 judgment, the competent authority has issued Ext.P5 decision taking the stand that substitution of a name is impermissible within the parameters of the Registration of Births and Deaths Rules, 1970 and a rectification as sought for cannot be granted.

3. After having heard the learned counsel for the parties, I am satisfied that the stand taken by the registering authority in the impugned Ext.P5 is perfectly justified and cannot be found fault with. This is because, the parents had apparently stood by the entry in Ext.P1 that the name of the child is Marwa Faizal and it was, therefore, that they made Ext.P2 notification changing the name from Marwa Faizal to Reshafatima Faizal. Therefore, it is not a case where an error had crept into the Register. Nor could the statutory authority be directed to rectify that entry by treating it as an error to fall within the Act and the Rules.

4. As already noticed, the child was born in 2003. In

this writ petition it is shown that acting on the changed name, the minor has been issued passport. It is also the requirement of that minor child that she has to appropriately utilise that passport for joining her father who is abroad. Under such circumstances, even assuming that the statute and the rules framed thereunder do not provide for changing the name of the individual in the register of births and deaths and though only a rectification is contemplated by the rules, the exigencies of the extra-ordinary situation in the case in hand create sufficient foundation for the issuance of a writ to render justice in the circumstances, particularly when there is no prohibition in the Act or the Rules for changing the name in the register. The statutory authorities are not empowered by the Act and the Rules to change the name, otherwise than by rectification of an error. But the facts in hand show that justice in the situation requires that the minor is permitted to have her name as notified by Ext.P2 entered in the register in lieu of the name Marwa Faizal which now occurs there, since consistency in such entry with her passport and other documents is required for her to enter other nations, in terms of law. I treat this as a special case because of the age of the child and the chances of

misuse of such change of name being virtually nil.

5. Under the aforesaid circumstances, it is directed that the entry Marwa Faizal as the name of the child registered as evidenced by Ext.P1 with Registration No.1573 shall stand struck off by the force of this judgment and the name Reshafatima Faizal will stand substituted, instead. Such change in the entry shall be done by the force of this judgment and such consequential entries in the records shall be made by the competent among the respondents and appropriate birth certificate will be issued as early as possible.

The writ petition is allowed in the above terms.

SD/-
THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

-TRUE COPY-

P.S.TO JUDGE.